

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re: Chapter 9 No. 13-53846
City of Detroit, Michigan Debtor. Hon. Steven W. Rhodes
_____/

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY AND ENTRY OF ORDER
WAIVING THE PROVISIONS OF FED. R. BANKR. P. 4001 (a) (3)**

Fifth Third Bank, as servicer for Fifth Third Mortgage Company, by and through its attorneys, Trott & Trott, P.C., pursuant to 11 U.S.C. § 362(d), 11 U.S.C. § 922(b), L.B.R. 4001-1(E.D.M.), and L.B.R. 9014-1 (E.D.M.), moves for relief from the Automatic Stay to pursue an action pending in the Wayne County Circuit Court to quiet title to 8445 Saint Mary's St., Detroit, MI 48228-1960; to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and/or obtain possession of the aforementioned property; and for waiver of the provisions of Fed. R. Bankr. P. 4001 (a) (3); and in support thereof states as follows:

1. This Court has jurisdiction over the proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. On July 18, 2013, Debtor sought protection under Chapter 9 of the Bankruptcy Code.

3. Pursuant to 11 U.S.C. § 922(a), the automatic stay of 11 U.S.C. § 362(a) became applicable at the time that the bankruptcy petition was filed.

4. Movant is the servicer for Fifth Third Mortgage Company who is the holder of a mortgage on property owned by Robert Fred Hellner and located at 8445 Saint Mary's St., Detroit, MI 48228-1960 (the "Property"). See, **Loan Documents, Exhibit 6-A**.

A. State Court Action to Quiet Title.

5. On June 21, 2013, Fifth Third Mortgage Company filed a complaint to quiet title to the Property (the "Complaint") in the Wayne County Circuit Court, State of Michigan, Case No. 13-008219-CH (the "State Court Action"). See, **Complaint, Exhibit 6-B**.

TROTT & TROTT, P.C.
31440 NORTHWESTERN
HWY
STE 200
FARMINGTON HILLS, MI
48334-5422
PHONE 248.642.2515
FACSIMILE 248.642.3628

6. The City of Detroit, West Town Homes I, LLC, and Charter One Bank, N.A. are defendants in the State Court Action.

7. The Complaint, among other things, alleges that:

- On August 21, 2006, West Town Homes I, LLC granted an Open-End Mortgage on approximately 18 parcels of property to Charter One Bank, N.A. in exchange for a loan in the amount of \$2,000,000.00 (the "Open-End Mortgage"). This mortgage was granted in conjunction with a Note, Revolving Credit Agreement, or Residential Construction Loan Agreement.
- It is believed that the Property is one of the parcels encumbered by the Open-End Mortgage and that once the Property was sold by West Town Homes I, LLC, a partial discharge of the Open-End Mortgage was to be recorded with the appropriate register of deeds.
- On October 13, 2006, West Town Homes I, LLC also granted a mortgage on approximately 19 parcels of property to the City of Detroit in exchange for a loan in the amount of \$1,500,000.00 (the "CoD Mortgage").
- It is believed that the Property is one of the parcels encumbered by the CoD Mortgage and that once the Property was sold by West Town Homes I, LLC, a partial discharge of the CoD Mortgage was to be recorded with the appropriate register of deeds.
- On September 17, 2009, West Town Homes I, LLC sold the Property to Robert Hellner via Warranty Deed.
- On September 18, 2009, Robert Hellner granted a mortgage to Fifth Third Mortgage-MI, LLC, which was later assigned to Fifth Third Mortgage Company.
- Neither Charter One Bank, N.A., nor the City of Detroit, recorded partial discharges of their mortgages with respect to the Property after it was sold to Mr. Hellner; and their mortgages continue to encumber the Property and cloud the chain of title.
- Fifth Third Mortgage Company seeks judgment in its favor such that any interest that the City of Detroit or Charter One Bank, N.A. may have solely with respect to the Property is discharged and terminated and that the mortgage held by Fifth Third Mortgage Company is held in first priority.

8. On July 25, 2013, the State Court Action was administratively closed because of the filing of Debtor's Bankruptcy Case. **See, Administrative Order, Exhibit 6-C.**

9. Fifth Third Mortgage Company is pursuing the State Court Action so that it can quiet title to the Property, as it claims that its mortgage is in first priority, and then to move forward with its state remedies with respect to its mortgage and the Property.

10. Under the Provisions of 11 U.S.C. § 362(d)(1), made applicable to this case under 11 U.S.C. § 922(b), relief from the automatic stay may be granted for cause.

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48334-5422
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FACSIMILE 248.642.3628

11. Here, there is sufficient cause for modification of the Automatic Stay as the administration of justice and the convenience of the parties is better served by having the state court act as the one tribunal before which all claims, counterclaims, or cross-claims in the State Court Action may be heard instead of having multiple law suits in different tribunals caused by jurisdictional issues.

12. As such, Fifth Third Mortgage Company requests the Court to modify the Automatic Stay so that it may proceed with the prosecution of the State Court Action to a final judgment and, if it prevails, to record such judgment, as may be allowed by the State Court, with any applicable and appropriate register of deeds.

B. Foreclosure of Property in which there is a junior lien that is held by the Debtor.

13. In addition, there exists a September 18, 2009 mortgage on the Property that is in the original amount of \$7,190.81, which was granted to the City of Detroit by Robert Hellner (the "CoD Junior Mortgage"). See, CoD Junior Mortgage, Exhibit 6-D.

14. The CoD Junior Mortgage was recorded September 30, 2009 in Liber 48145, Page 1210 with the Wayne County Register of Deeds and is junior in priority to the Mortgage held by Fifth Third Mortgage Company.

15. The approximate market value of the Property is \$66,494.00. See, SEV, Exhibit 6-E.

16. Trott & Trott, P.C. has been informed by Movant that the amount due and owing is approximately \$101,747.47.

17. Here, there is also is sufficient cause for modification of the Automatic Stay so that Movant, and any successors or assigns, may proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and/or obtain possession of the Property because the Debtor and the bankruptcy estate will not receive any benefit from the sale of the Property with respect to the CoD Junior Mortgage since the value of the Property is less than the amount of the Mortgage held by Fifth Third Mortgage Company.

18. Robert Fred Hellner, City of Detroit, Daniel M. McDermott, Sean M. Cowley, Mario's Restaurant, Inc., Paula A. Hall and Claude D. Montgomery may have an interest in the subject property to the knowledge and belief of Movant.

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FARMINGTON HILLS, MI
48334-5422
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FACSIMILE 248.642.3628

19. Pursuant to LBR 9014-1(b)(4) (E.D.M.), a copy of the proposed *Order Granting Relief from the Automatic Stay and Waiving the Provision of Fed. R. Bankr. P. 4001(a)(3)* is labeled as Exhibit "1".

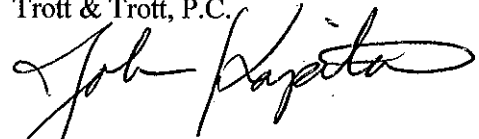
20. Movant also requests that in the event a hearing on this motion is held, and after said hearing the Court orders submission of an order in substantial compliance with Exhibit 1, presentment of said order shall be waived.

21. Concurrence from Debtor's counsel was sought by counsel for Movant on October 7, 2013 and concurrence was not given.

WHEREFORE, Movant respectfully requests that the Court enter an Order Granting Relief from the Automatic Stay and Waiving the Provision of Fed. R. Bankr. P. 4001(a)(3) for good cause shown pursuant to 11 U.S.C. §362(d)(1) and/or (2), and that the Order is effective immediately upon entry by this Court notwithstanding the provision of Fed R. Bankr. P. 4001(a)(3); and whatever other relief the Court deems just and equitable.

Dated: October 8, 2013

Respectfully Submitted,
Trott & Trott, P.C.



/s/ John P. Kapitan (P61901)
Attorney for Fifth Third Bank as servicer for
Fifth Third Mortgage Company
31440 Northwestern Hwy Ste 200
Farmington Hills, MI 48334-5422
248.642.2515
EasternECF@trottlaw.com

T&T #407543B03

TROTT & TROTT, P.C.
31440 NORTHWESTERN
HWY
STE 200
FARMINGTON HILLS, MI
48334-5422
PHONE 248.642.2515
FACSIMILE 248.642.3628

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:
City of Detroit, Michigan
Debtor.

Chapter 9 No. 13-53846

Hon. Steven W. Rhodes

**ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY AND ENTRY OF
ORDER WAIVING THE PROVISIONS OF FED. R. BANKR. P. 4001 (a) (3)**

Fifth Third Bank, as servicer for Fifth Third Mortgage Company, by and through its attorneys, Trott & Trott, P.C., having filed a *Motion for Relief from the Automatic Stay and Entry of Order Waiving the Provisions of Fed. R. Bankr. P. 4001(a)(3)* (the "Motion") that seeks relief from the Automatic Stay so that Fifth Third Mortgage Company may continue with its pending law suit that was filed in the Wayne County Circuit Court against the City of Detroit and several other defendants to quiet title to the property located at 8445 Saint Mary's St, Detroit, MI 48228-1960 (see, *Fifth Third Mortgage Company v. West Town Homes I, LLC, City of Detroit, and Charter One Bank, N.A.*, Case No. 13-008219, Wayne County Circuit Court, State of Michigan); additionally, the Motion seeks relief from the Automatic Stay so that Movant (and any successor or assigns) may proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and/or obtain possession of the property; and the Court being fully advised in the premises:

IT IS HEREBY ORDERED that the Automatic Stay under 11 U.S.C. § 362 is modified such that Fifth Third Mortgage Company is allowed to continue with the law suit that it filed in the Wayne County Circuit Court against the City of Detroit in *Fifth Third Mortgage Company v. West Town Homes I, LLC, City of Detroit, and Charter One Bank, N.A.*, Case No. 13-008219, Wayne County Circuit Court, State of Michigan.

IT IS FURTHER ORDERED that if Fifth Third Mortgage Company prevails in the lawsuit, it shall also have relief from the Automatic Stay under 11 U.S.C. § 362 to

record any such judgment obtained through the law suit with the applicable and appropriate register of deeds, and as is allowed by the Wayne County Circuit Court, State of Michigan.

IT IS FURTHER ORDERED that Movant (and any successor or assign) is granted relief from the Automatic Stay so that it may proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and/or obtain possession of the property located at 8445 Saint Mary's St, Detroit, MI 48228.

IT IS FURTHER ORDERED that this Order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Bankruptcy Code.

IT IS FURTHER ORDERED that Fed. R. Bankr. P. 4001(a)(3) is waived.